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Applicant: Ronald G. Brock, SR Examiner: Milef, Elda G.
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/kelly simpson/
Name: Kelly Simpson

REPLY BRIEF

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Examiner Milef:

In response to the Examiner's second or subsequent Examiner's Answer dated June 9, 2009, pursuant to the Appeal Brief filed in the above-identified application on September 24, 2007, and in accordance with 37 C.F.R. § 41.41, Appellants respectfully submit the following Reply Brief. This Reply Brief is being filed within two months of the date of the Examiner's Answer and is therefore believed to be timely. 37 C.F.R. § 41.41(a)(1). The following items are set forth as prescribed in M.P.E.P. § 1208.

I. STATUS OF CLAIMS

Claims 1-4, 6-17, 41-45 and 51-57 stand finally rejected in the Final Office Action dated January 24, 2007 and are the subject of this Appeal. Claims 5-17 and 51-53 were cancelled with the amendment accompanying Appellant's Substitute Appeal Brief filed by Appellant on or about February 6, 2009. Claims 18-40 and 46-50 remain withdrawn. Claims 1-4, 41-45 and 54-57 are pending, as set forth in Appendix B of Appellant's Substitute Brief filed on or about February 6, 2009.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant respectfully requests review of the following grounds of rejections made by the Examiner:

1. Rejection of claims 1, 2, 4 and 57 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,857,174 to Dugan (“Dugan”) in view of U.S. Patent No. 6,609,118 to Khedkar et al. (“Khedkar”).
2. Rejection of claims 41-45 and 54-56 stand finally rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Dugan in view of U.S. Patent No. 5,680,305 to Apgar (“Apgar”).
3. Rejection of claim 3 under 35 U.S.C. §103(a) as allegedly unpatentable over Dugan in view of the *Three More Companies* Article.

In the Examiner’s second or subsequent Answer, the Examiner has withdrawn her rejection of claims 6-17 and 51-53 under 35 U.S.C. § 101 and her rejection of claim 56 under 35 U.S.C. § 112 and restated the grounds of rejection by repeating verbatim the rejections her first Answer and in the final Office Action dated January 24, 2007. No new ground of rejection has been set forth.

III. ARGUMENT

Introduction

In the Examiner's second or subsequent Answer, the Examiner has confirmed that Appellant's statements in the Appeal Brief under 37 C.F.R. § 41.37(c)(1)(i) through (c)(1)(vi) are correct. The Examiner has also confirmed that the copy of the appealed claims submitted under 37 C.F.R. § 41.37(c)(1)(viii) is correct.

The Examiner's comments in the Response to Arguments section of the Examiner's Answer (pages 17-23) have been carefully reviewed. As understood by the Appellant, the Examiner's contentions may be stated briefly as follows:

(1) Dugan and Khedkar together disclose "wherein said processor is configured to use at least one of said standard monetary values for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties" (*See* Examiner's Answer, page 18).

(2) Khedkar teaches a "standard monetary value" because Appellant broadly defines the phrase "standard monetary value" as "[e]ach value effecting characteristic is then assigned a standard monetary value, which can be either a positive or a negative value (step 81)" (*See* Examiner's Answer, page 19).

(3) The Examiner's conclusion of obviousness was proper because it takes into account only knowledge that was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure (*See* Examiner's Answer, page 20).

(4) Dugan's disclosure of "However, the categories 110 and weights may be adjusted to better account for the various real estate markets, such as commercial, retail and residential properties, as well as for various location such as rural, suburban, and urban properties..." and Figs. 6a-6m and 7a-7i teach the limitation of claim 6 requiring "wherein said weight indicators of each of said plurality of physical factors in said each of said plurality of sets are equal."

The Appellant's response to each of these contentions appears below.

- (1) Dugan and Khedkar do not teach or suggest obtaining a “market standard monetary value” as required by pending claims 1, 2, 4, and 57

Dugan and Khedkar alone or together do not teach or suggest the limitation “wherein said processor is configured to use at least one of said standard monetary values for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties.”

In the final Office Action, the Examiner rejected claims 1, 2, 4 and 57 as allegedly obvious over Dugan in light of Khedkar. In making her rejection, the Examiner stated “Dugan does not specifically disclose that a standard monetary value for each of said plurality of monetary value-effecting characteristics is applied and wherein said processor is configured to use at least one of said standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties. Khedkar, however teach [sic] (‘FIG. 11 shows possible adjustments 210 (in thousands of dollars to a comparable’s price, as a function of the different number or bathrooms between the subject and comparable property...’’) (See final Office Action mailed January 24, 2007, page 5). Accordingly, the Examiner’s rejection was based on the belief that Khedkar teaches or suggests the required “market standard monetary value” limitation.

Despite the Examiner’s contention, the Examiner’s citation to Khedkar’s teaching of ““possible adjustments 210 (in thousands of dollars to a comparable’s price, as a function of the different number or bathrooms between the subject and comparable property...’’) does not teach or suggest obtaining “a market standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties.” Simply stated, the possible adjustments taught in Khedkar do not teach or suggest obtaining any market standard monetary value. Furthermore, it does not teach or suggest a market standard monetary value for each monetary value-effecting characteristic to obtain a market standard monetary value for each of a plurality

of real estate properties, as required by claims 1, 2, 4, and 57. Accordingly, the adjustments cited by the Examiner do not teach or suggest obtaining a market standard monetary value of any kind to one of ordinary skill in the art.

Furthermore, as Appellant stated in his Appeal Brief, in making the rejection, the Examiner failed to appreciate that “adjustments 210” disclosed in Khedkar are made with respect to differences that depend upon the particular subject property selected, which cannot be used to obtain market standard monetary value, as defined by claimed inventions. Market standard monetary value (herein sometimes referred to as simply “market standard value” or “MSV”) is determined using “standard monetary values” as claimed, and the market standard monetary value does not depend upon the selection of any particular property (subject property or otherwise). In fact, in the present invention, market standard value does not in any way depend on the particular property selected. Instead, the market standard value is determined by adjusting the recited “actual monetary value” by the “standard monetary values”, which are not dependent upon any particular subject property.

Khedkar describes that the comparable properties undergo adjustments to their sales prices based on the difference between the selected subject property and the comparable properties (*See col. 10, lines 21-26*). Khedkar does not teach or suggest and, in fact, teaches away from making these adjustments in the absence of a comparison to the subject property. Accordingly, it should be appreciated that Khedkar teaches an adjustment for a property that varies in each scenario depending on the selection of the subject property, which does not teach or suggest providing or obtaining a standard monetary value.

Indeed, Khedkar describes that an adjustment should not even be done if four comparables cannot be found (col. 10, lines 60-63). In contrast, a market standard value may be determined for a property according to Applicant’s claim 1 by adjusting the actual monetary value by the standard monetary values in the database. It is not necessary to select a set of other properties prior to determining this MSV.

Appellant’s specification provides an example of a market standard value calculation (paragraphs [0077] and [0078]). Here, the table provided illustrates an Actual Rent of \$1000 that is adjusted by several standard monetary values (e.g., fireplace \$15) to provide a Market

Standard Rent of \$921. In particular, note that the calculation of the Market Standard Rent is not dependent on the selection of comparable properties or any other property.

Furthermore, Applicant's specification in paragraph [0075] describes a market standard value as standardized values for a property's sales price or rental value. One of skill in the art would understand that such standardization is not limited to merely a small group of selected comparable properties used to provide an appraised value for a single subject property.

Accordingly, for each of these reasons independently, the Examiner has failed to show that Dugan or Khedkar, alone or together, teach or suggest the required "wherein said processor is configured to use at least one of said standard monetary values for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said plurality of monetary value-effecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties" limitation.

(2) Khedkar does not teach or suggest a "standard monetary value" because of Appellant's definition of "standard monetary value"

The Examiner argues that Khedkar teaches a "standard monetary value" because Appellant broadly defines the phrase "standard monetary value" as "[e]ach value effecting characteristic is then assigned a standard monetary value, which can be either a positive or a negative value (step 81)" (See Examiner's Answer, page 19). The Examiner's citation is misdirected as it is not the Appellant's definition of "standard monetary value," a phrase that is well known in the art. The citation the Examiner refers to simply explains that standard monetary values can have positive or negative values. Accordingly, Khedkar does not teach or suggest obtaining "standard monetary values" as required by the limitation.

(3) The Examiner's obviousness conclusion was improper because it relies on hindsight and knowledge gleaned from Appellant disclosure

The Examiner claims that her conclusion of obviousness was proper because it takes into account only knowledge that was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure (See Examiner's Answer, page 20). Appellant respectfully disagrees. The Examiner's conclusion of obviousness relies on knowledge that surpasses that of one of ordinary

skill in the art and relies on knowledge from Appellant's disclosure. For example, and not by way of limitation, the Examiner's rejection relies on knowledge from Appellant's disclosure regarding: (1) "market standard monetary value" using "standard monetary values" where the market standard monetary value does not depend upon the selection of any particular property selected; (2) market standard value by adjusting the recited "actual monetary value" by the "standard monetary values," which are not dependent upon any particular subject property; (3) the market standard rent not being dependent on the selection of comparable properties or any other property; and (4) a market standard value not varying with a change in the subject property to conclude that various aspects of the claim limitation are obvious in light of cited references.

- (4) Dugan does not teach or suggest "wherein said weight indicators of each of said plurality of physical factors in said each of said plurality of sets are equal" as required by pending claim 6

The Examiner states Dugan's disclosure of "However, the categories 110 and weights may be adjusted to better account for the various real estate markets, such as commercial, retail and residential properties, as well as for various locations such as rural, suburban, and urban properties..." and Figs. 6a-6m and 7a-7i teach the limitation of claim 6 requiring "wherein said weight indicators of each of said plurality of physical factors in said each of said plurality of sets are equal." The Examiner further states, "it is obvious from the teachings of Dugan that the categories relating to physical factors, i.e. Facilities and Improved could be assigned any weight relevant to the appraised property e.g., land or structure, that ultimately equals and IPS value of 100 thereby allowing the user to obtain solely a physical rating" (*See* Examiner's Answer, page 22). Appellant respectfully disagrees. Dugan does not teach or suggest the weight indicators of the physical factors in each of the sets being equal. As a result, the Examiner, without justification, concludes that because Dugan discloses physical factors that can be assigned a value, that it would be obvious to one of ordinary skill in the art to set the weight indicators for each of the physical factors to be equal. Appellant respectfully disagrees.

Conclusion

The Appellant respectfully maintains that a prima facie case of obviousness has not been established for any of the rejected claims, for the reasons set forth in the Appeal Brief and in the present Reply Brief. All of claims 1-4, 41-45 and 54-57 are therefore believed to be in condition for allowance.

The Appellant's undersigned attorney may be reached by telephone at 310.586.7703. All correspondence should continue to be directed to the address listed below, which is the address associated with Customer Number 33717.

Respectfully submitted,

Date: August 10, 2009

/steve p. hassid/
Steve P. Hassid
Reg. No. 46,762

Customer Number 33717
GREENBERG TRAURIG, LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404
Phone: (310) 586-7703
Fax: (310) 586-0203
E-mail: hassids@gtlaw.com
PHX 328,909,573v1